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THE LEGISLATIVE REFERENCE BUREAU OF PENNSYLVANIA.¹

During the last (1909) session of the Pennsylvania legislature an act was passed and duly approved by the Governor, establishing a Legislative Reference Bureau in Harrisburg; and we have been asked by the editor of the University of Pennsylvania LAW REVIEW to give its readers a more or less detailed account of what has been done since the establishment of the Bureau; and of what it is proposed to do both during the coming session of the legislature and afterwards. Before doing so, however, it might be advisable, even at the risk of a charge of prolixity, to set forth some of the main reasons for its existence.

In the month of January, 1911, there will assemble in the different capitals of over forty states of this country, thousands of men who have been selected to make the laws for those states. They will come from the professional offices, from the farms, from the shops. They will be men of different degrees of education and will comprise a wide range of intelligence. After busily and earnestly attending to their duties for a few weeks they will go back to their usual callings.

But immediately after they have completed their labors, after every man of them has done his duty as he saw it, there will go up from the newspapers, from the public platform, from the man in the street, a great outcry against the legislatures, as there has gone up annually for generations. The laity and the press will exclaim as they have done for years that we are overburdened with useless laws and that every succeeding session of the legislature adds to the ever increasing load. And on the other hand the bench and the bar will lift up their voices against what they assert is the careless and hasty manner in which the laws have been prepared, and the ignorance of the prior law evinced by those whose votes have placed those laws upon the statute books.

¹ Contributed with the approval of Mr. James N. Moore, Director, during his illness. [Ed.]

It is the fashion nowadays to say that we have too many laws; that the men we send to the legislature are incompetent and negligent; and many are the jests about our legislators that find an outlet through the public prints. But is it so? Let us examine it a bit more in detail. In the last session of the Pennsylvania legislature there were 257 men—Senators and Representatives. They came from almost every known calling—but in every case from a calling that was respectable. They were successful men. They were ambitious or they would never have sought to represent their district at Harrisburg. They were educated men—for the most part well educated. Almost one-fourth of their number were members of the bar. But what did they know of the making of laws? Excepting the small number of those who had been in the legislature for several terms, the greater part of them knew nothing of the mechanics of legislation. And with the exception of the lawyers very few of them had anything but a vague knowledge of the statute law of Pennsylvania. Yet, in the short space of time intervening between the day of their election and the date of the assembling of the legislature—a bare two months—they were expected to become Solons of a high degree of intelligence. Men who knew nothing of law were supposed to be instantly endowed, through the medium of the ballot-box, with a knowledge that would enable them to grapple masterfully with the deep legislative problems ever recurring in a great commonwealth like the State of Pennsylvania. Is it any wonder they did not do all that the idealist expected of them? Is it not a greater wonder that they did do as well as they did in the short time allowed them for their work?

As Ordranax in his work on constitutional legislative says, "The right to make laws being the political heritage of every citizen in a republic, the knowledge necessary to frame them is assumed to come to him by intuition."

In the lower branch there were introduced almost 1300 different bills. Some of these, naturally, never came out of the committee to which they were referred, but in spite of this fact, there were between 1100 and 1200 different bills considered by the House of Representatives. In bound form they fill four immense, ponderous volumes. While statistics are not available

regarding the number of bills introduced in the Pennsylvania Senate in the last session, we do know that they had on their calender, and gave consideration to, over 900 bills. Many, if not the vast majority, of all these bills in both branches were introduced at the request of their constituents, at the request of organizations, boards, societies, at the request of municipalities who sought by this means to remedy a supposed wrongful condition or to keep step with the advancing ideas of the world. We are speaking, of course, of those bills other than appropriation bills.

It was almost the end of January before the legislature settled down to the steady grind of law making; and it adjourned April 15, 1909, so that only two months and a half could be spent in the actual consideration of this great flood of projected legislation. The net result was 659 statutes inclusive of two resolutions of a more or less permanent and important nature. Of this number, 347, or 52.65 per centum, were appropriation bills; 22, or 3.33 per centum, were repeals of former statutes; 7, or 1.06 per centum, were supplementary to prior laws; 78, or 11.83 per centum, were amendments; and 203, or 30.8 per centum, were what might be termed original legislatoin.

We must not lose sight of the fact that all this was done by two bodies of men, for the greater part untrained in law making, elected from all over the state as representatives of their communities. Must these men, or those who elected them, be blamed if the result of their labors does not approach that which would have been done by a body of exprts, trained in the science of law and law-making? The same thing is true in every state in the union. The world cannot accuse all these legislators of ignorance and incompetence. To do so would be manifestly unjust and absurd. So we must cast about for the real basis of all these accusations and see if there is not some way of remedying the conditions.

The representative system of government, sedulously maintained and handed down to us by our forefathers, is too firmly rooted in America to give way to any other. We need laws for the maintenance of order in society, but we cannot all meet as a huge body of electors, as they did in olden times, and legislate for the common welfare of the state. We must select such of our number as we may deem representative, who know our needs and

wants, to meet at the state capital at stated intervals to make our laws. We select *representative* men—not our lowest nor our most cultured—but men who will represent those who elect them. These men must necessarily be untrained and unskilled in law-making, from the very nature of things.

And yet their work in this respect is one that calls for the exercise of no mean talents. Mill in his "Representative Government," said: "There is hardly any kind of intellectual work which so much needs to be done, not only by experienced and exercised minds, but by minds trained to the task through long and laborious study, as the business of making laws." This is, however, the language of an idealist. We must never forget that we are living in a practical age, and that practical methods must prevail even in the devising and framing of our laws. Ordronaux says: "The authority to make laws is one of the most important trusts which can be confided to a representative assembly. It implies confidence on the part of the people, and skill and experience on the part of the legislator."

Such is the present condition of our legislative methods. The question is, how can we improve them without changing, without impairing in the slightest, the great institution of representative government. A number of means have been suggested from time to time, during the present century.

We may legislate according to the British method. In the Houses of Parliament almost all of the bills introduced are prepared by the Government. A member's private bill rarely succeeds in passing. Such a method is foreign to our notions and will never be adopted in Pennsylvania. Then, again, we may have all our laws prepared by our judges, as was the custom for many generations in England.

Lord Hardwicke, in speaking in the House of Lords, in 1756, on the Militia Bill, said: "In old times almost all the laws which were designed to be public acts, and to continue as the standing laws of this kingdom, were first moved for, drawn up and passed in this house, where we have the learned judges always attending and ready to give us their advice and assistance." In a state of the size of Pennsylvania, such a plan, however, would be impractical. Or we may have a permanent commission which

could prepare all bills and present them to the legislature for consideration and approval, as, for example, the "Commission of Legislation," once actually proposed by John Stuart Mill, but never seriously considered; and, of course, never adopted. Such a plan would open the door to greater evils than those it would be designed to remedy. Again, it has been proposed to follow the analogy of the other branches of our state government and establish a permanent bureau whose object would be to collect, compile, classify and index information on every subject pertaining to legislation, and have it in such convenient shape that it would be immediately available for the use of the legislature; and, more than that, to have in this bureau a permanent body of skilled draftsmen, learned in the law, who would advise and aid the legislators in the preparation of their bills. Every department of the State Government has its adviser (the Attorney-General) save that department which needs it most, and where the lack of such advice is fraught with great peril to the state. Such an end is sought in the Legislative Reference Bureaus now being established throughout the country.

In 1901 a Legislative Reference Department, under Doctor Charles MacCarthy, was established in Madison, Wisconsin. It was, in a measure, an experiment, but was pregnant with such great possibilities that the then Governor, R. M. LaFollette, gave it his heartiest sympathy and co-operation. Its success was so pronounced that it has been continued ever since, growing with the years, until it is now an indispensable adjunct of the legislature in Wisconsin. Other states, from time to time, have seen its advantages, and have one after another established similar departments in their own capitals.

Pennsylvania, in its splendid conservatism, in the words of Pope, while not the first by whom the new was tried, was not the last to lay the old aside.

In 1907 an effort was made to enact a bill creating a Legislative Reference Bureau at Harrisburg. Owing to the manner in which the bill was drawn and to a misapprehension of its object on the part of many members, it failed of passage. But the leaders in the movement were not discouraged by this temporary de-

feat, and again renewed their efforts in the legislature of 1909, this time with success.

Owing to the difficulty in securing quarters, it was not until January, 1910 that the actual work of the Bureau was taken up. The first step was to establish a system of classification by which all the material to be gathered could be systematically arranged and made available for instant use. The living statute law of Pennsylvania, as it is now on our books, was made the basis of this classification. The method used for many years by the New York State Library in its work in comparative legislation was carefully adapted to the needs of Pennsylvania. Upon this as a framework a scheme was prepared and topically arranged. This done, all the bills of the 1909 session of the Legislature were carefully examined, and filed away according to this classification. If a bill died in committee, it was filed as introduced. If reported out, each reprint, showing all amendments, was attached to the original draft. If it became a law, a copy of the act was filed with it. If it passed but was vetoed by the governor, a copy of the veto message was attached to it. So that we have now in the Bureau, systematically arranged, a complete history of each bill introduced in our last legislature. Cards, bearing a resumé of the title of each bill, were also prepared, classified and filed.

In the meanwhile arrangements had been made to obtain daily a card bearing the title of every bill introduced in the Legislatures of other states in the sessions of 1910. When these were received they were gone over carefully, the important bills selected and sent for. As these were received they were indexed and filed away according to the Bureau's basic scheme of classification. This was done to keep us in touch with new legislative ideas throughout the country.

Early in the year the Bureau subscribed for seventeen newspapers in most of the large cities of the country, and especially those published in the chief cities of Pennsylvania. These have been read carefully and clipped. The clippings have been indexed and filed. The same thing has been done with a large number of periodicals, weekly, monthly and quarterly. All this material, fresh and concise for the most part, furnishes us with a helpful

view of modern thought in America and England along lines germane to our work.

We have written hundreds upon hundreds of letters to the various states, to the different Departments at Washington, to innumerable scientific, social, political and other organizations all over the country for books and pamphlets containing material useful to us in our work. These were classified, indexed and filed. Compilations of laws on different subjects were obtained. Decisions of the courts on certain important laws have been copied and filed.

All this material, of whatsoever nature, and in whatsoever shape, is so filed that the one key-number will enable us to find quickly, on a given subject, whether a bill on that subject was introduced in any of the legislatures of 1910, and what pamphlets, references to books or clippings we have in our files. We propose to keep these bills especially, from session to session as a guide to future legislators.

Another desideratum that we kept steadily in view was an exact and authentic list of the living statutes of Pennsylvania, as they are now on our statute books. To this end, as time allowed, the statutes of Pennsylvania have been gone over, act by act, section by section, beginning with the pamphlet laws of 1909 and going backward, noting upon the margin of the page of the original act all repeals, all amendments and all supplements. At the same time we have been going over the decisions of the courts of Pennsylvania, especially the Supreme and Superior Courts, to note all acts that the courts have declared to be repealed by implication, and all that have been declared unconstitutional. In some states, where there is an official compilation of the living statute law, a work of this nature would be wholly unnecessary, but, unfortunately, we do not have in Pennsylvania such an *official* compilation, and must depend upon digests prepared unofficially by enterprising lawyers and publishing houses. These unofficial works may be correct, or they may not. We have been assured, again and again, by lawyers who have made special studies of certain branches of the law, that even the best of these digests is far from being perfect.

This work of examining the statute law has been prosecuted only for a period covering approximately forty years, inasmuch as the legislation since the adoption of our constitution in 1873 has been of vastly greater importance than that which preceded it. But the intention is to carry on this work until the whole of our statute laws, passed since the beginning of the 18th century, has been gone over.

While we are not as well equipped as we shall be in the course of time, yet with what we have gathered together we feel sure that we can lighten, to a very material extent, the labors of the representatives. Our aim has been hitherto, to be of *practical* service to them, to take from their shoulders the burden of collecting and digesting practical information on innumerable subjects, and thus to give them greater leisure and greater opportunity to consider the mass of bills that will pass before them. And we have arranged that, during the session, information sought by them on any subject, if not in our files or quickly accessible, will be obtained, digested and presented to them in convenient shape.

Another plan has been adopted to aid the legislators. In the hurly burly of the session, in the great confusion that necessarily exists, a member has great difficulty in keeping trace of his bills. In the Bureau two dockets have been prepared, one for the bills of each branch. From day to day, every action on each bill introduced will be noted in these dockets, the bills carefully indexed and the dockets kept up to the minute so far as practicable. Any member will thus be able to see at a glance the exact status of any bill in which he is interested.

Of course this is done, and done well, by the clerks of both branches of the legislature in their "Bills in Place" dockets and their "Bill Books," but we thought that by combining both in one set of dockets and keeping it away from the confusion that necessarily exists in both the legislative chambers and in the clerks' offices we could perhaps render the work of the Senators and Representatives much easier.

To lighten our own work, and also to bring our Bureau to the attention of those for whose help it was created, we have mailed to each Senator and Representative a circular letter setting

forth in some detail how we propose to be of service to them, and urging them to avail themselves of our help as early as possible, and showing them that if they did so, greater care can be taken with the work and better results secured. We also notified them that if any member so requests, we shall draft any bill for him that he may desire to introduce. A written request for this service, with detailed instructions, is required of the member. One of our chief rules is never to urge nor to oppose any legislation in any manner, directly or indirectly. And to this end we shall draw a bill for a member *solely* in accordance with his instructions, taking extreme care however to see that it does not infringe any of the prohibitions of our state constitution. Therein we imagine we shall be of greatest service to our lawmakers.

There is another branch of Legislative Reference work that is not generally touched upon.—That is the function of supplying information to the citizens of the State at large. In this alone, we think, the Legislative Reference Bureaus of the future have a splendid field of work. At the present time inquiries are sent to almost every department of the State Government, from the Governor down. In each instance these inquiries are answered promptly and courteously as far as the resources of the department permit. But it often happens that a request for information remains unanswered simply because there is no practical way provided for answering it. And again a citizen seeking information relative to the laws of this or other states, or in search of necessary information relative to the State Government, is at a loss to know to which department his request should be addressed.

The law creating the Bureau states that it is "for the use and information of the members of the General Assembly, the heads of the several departments of the State government, and *such other citizens of the Commonwealth as may desire to consult the same.*" In our work hitherto, since the organization of the Bureau, we have given this the most liberal interpretation, and have tried to accede as fully as possible to all requests for information. We have been asked for copies of laws not alone in our own state, but in almost every state in the Union. We have been asked for compilation of the law on certain branches. We have been asked for statistics on innumerable subjects. In every

case, consistent with our limited working force, we have tried to supply the information. We intend to develop this branch of our work as fully as possible, especially in the interim between sessions of the legislature. By means of a cordial reciprocity agreement with all other Reference Bureaus, we shall aim to collect from all over the country information that may be serviceable to the citizens and to the government of our state.

But there is one place where we have drawn the line. We have been asked again and again to furnish legal opinions on a number of matters. This we have absolutely refused to do and shall continue to refuse. On all questions of *policy* we shall say nothing. We shall not act as legal advisers. There are enough lawyers in this state to answer all such questions, and we do not propose to trench on their rights. Questions of what the law actually is, what the law is in other states, and kindred matters, we shall answer to the extent of our ability, but we shall not advise.

So much for the past. What about the future? The answer is obvious. Like the chef in a great hotel, who, as soon as he has finished the preparations for one meal, begins to plan for the next, we shall, as soon as the Legislature adjourns, plan for the one of 1913. By that time we shall have tested our Bureau. We shall have found where we are strong, and, what is better, we shall have found where we are weak. We intend, with the help of the legislature, to make our Bureau as efficient as any in the country. Experience alone will show us how it can be done.

The first task that will be taken up will be to finish the work on the statute laws which we have carried back to 1870. Then we shall, in the light of the knowledge thereby acquired, prepare a complete index to the living statute law of Pennsylvania. Each paragraph or section will be placed on a card and the cards arranged in their classified order. All laws that are obsolete, or which have been repealed will be eliminated. All amendments will be indexed in their proper place. So that we shall have in the course of time the whole statute law of the state topically indexed, and arranged to be ready for use. Decisions of the courts will be added as they are received in the various reports of cases.

The files of bills, both of this and other states, will be kept as we have described above. Compilations of laws of this state on important subjects will be prepared, and, if necessary, published in pamphlet form. It is astonishing the number of inquiries that come to our Bureau for compilations of laws. Pennsylvania in this respect is far behind many of her sister states. The laws of our state, we firmly believe, should be made as accessible to every citizen as practicable.

We shall, as far as possible, index many of the pamphlets and public documents now in our State Library. We can thus make accessible a vast amount of information which now lies hidden away in hundreds upon hundreds of publications. Of course in this work we shall index only such subjects as are relevant to our ends. The public documents of our own state contain a vast fund of valuable matter which should be made available not alone to our legislators but to the citizens of the state.

In all our work we shall keep constantly before our eyes the absolute neutrality of our Bureau. To every one who comes to us for advice or information we shall extend the Didonian greeting of *Tros Tyriusque*. We shall be absolutely non-partisan and non-political. We shall aim to recognize no factions, political or otherwise, and we shall offer no suggestions nor furnish any information that would tend to violate that rule.

But above all our chief aim shall be to maintain the most inviolable secrecy in the furnishing of assistance to any one. We wish to obtain and keep in full faith, the confidence of every citizen of the state, and to this end the officers and employes of the Bureau will bend every effort to keep secret everything that transpires in the Bureau.

We now come to a question we have been asked to touch on—that of the *ideal* Reference Bureau. It may seem rather presumptuous for us to venture an opinion now upon this point, but our experience during the past eleven months, and our knowledge, mostly at first hand, of the workings of other Reference Bureaus have shown us what great possibilities lie before every such department in this country; and while, owing to conditions over which we can exercise no control, we may never attain to the

ideal, yet we may at least venture a few suggestions which might be worthy of attention.

In the first place we firmly believe the Reference Bureaus of the country should be more or less independent ones, and not simply minor adjuncts of the State Libraries. 'Tis true they should be accorded the fullest and freest access to all the stores of material in these libraries, yet they should not be under their direction nor under their control. The heads of such bureaus should be men learned in the law above all things. They should be versed in political economy, in sociology and in history. They should be men who are capable of taking broad, liberal views. To place them under the direction of librarians whose aims and work are widely different would but tend to hamper their ultimate development. One of the chief functions of these Bureaus will be that of bill drafting. The British Government, which today has the most efficient drafting division in the world, would sooner think of delegating the preparation of parliamentary bills to Lord Kitchener or Admiral Fisher than of placing it under the direction and control of the director of the British Museum.

The Reference Bureaus should be in charge of practical men, and not academic visionaries. The men who make our laws are eminently practical men, and those in charge of the various Reference Bureaus must know how to meet them on a common ground. If the Reference Bureaus of this country are to be made the vehicle for the exploitation of "isms" and weird doctrines, the money the states spend on them will be wasted.

The Bureaus should be given quarters as near as possible to both the State Library and the legislative halls. In the hurry of a session time is a most important factor. The shelves and files of the bureaus should contain such information as, from their experience, the directors think will be most called for. And ample facilities should be afforded them of quickly procuring such other material as can not be found within the bureaus themselves. For a suitable time before, and during the session, all the help needful should be given them, and ample facilities granted them in their work.

As Sir Courtenay Ilbert, the draftsman (Parliamentary Counsel) for the British Parliament, says, "In the United States

the preparation of legislative measures is usually the work of amateurs." In 1869 there was established for the use of that body the office of Parliamentary Counsel. The object aimed at was "to establish an official department, at the head of which should be a Parliamentary Counsel of great experience, to whom all the Government Departments in England should have a right to go, so that there should be some person directly responsible for all their bills if anything went wrong. That responsibility was intended, of course, to be a constructive responsibility rather than the actual responsibility of the Parliamentary Counsel to draw every bill himself; for in dealing with so vast and multifarious work as the drawing of bills for every Department, it would be impracticable for any one man personally to undertake such a task, though he might and ought to be responsible for the draftsmen who were employed by him." And furthermore, since a good draftsman becomes more and more valuable to the state with every year's added experience, efforts should be made in every Legislative Reference Bureau to establish and maintain as efficient and permanent a bill-drafting force as can be assembled. If the work of the Reference Bureaus in this country is carried on along the lines now projected, the results attained in the betterment of our statutes will be incalculable. There will be less legislation. The laws that will be passed will be shorter and clearer. There will be less work for the courts in construing them. The dearly bought experience of one state may be made use of in another. And this work can go on from year to year until throughout the union we shall have better and more uniform laws. Confusion and inconsistencies will be avoided. And above all the legislators will be rendered far more efficient in their work.

If the equipment of the bill-drafting division is made efficient, every bill introduced in either House or Senate, before it is reported out of Committee should be submitted to the Bureau. Inaccuracies in wording, in phraseology, in citation, will thereby be avoided, and the possibility of the resulting statute being declared void by the courts largely eliminated.

All this work should be done in co-operation with the other departments of the state government. They should supplement

each other and not overlap. For example, let us say, the Health Department of our State, a most efficient one, collects certain data pertaining to the preservation of the health of our citizens. The Reference Bureau should collect no data that is properly collected by the Health Department. But if the question is one of comparative health legislation, helpful information should be found in the Reference Bureau and not in the Department of Health. By mutually helping each other in this manner there will not only be economy of time and money, but greater efficiency in the workings of both organizations.

James McKirdy,
Assistant Director.

Harrisburg, Pa.